

REMARKS

The present Amendment is responsive to the non-final Action mailed July 18, 2007. A Petition for a three-month extension of the term for response to the Office Action, to and including January 18, 2007, is transmitted herewith.

Claims 1-20 were rejected in the Action. Claims 1 and 19 have been amended herein for purposes of clarity. Claim 20 has been canceled herein. No claims have been added. Therefore, claims 1-19 are pending in the present application.

In the Action, the Examiner rejected claims 1-20 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,113,637 to Gill *et al.* ("Gill") in view of PCT Application WO 01/62191 to McGahan *et al.* ("McGahan"). While the Examiner asserted that *Gill* includes many of the limitations in claims 1-20, the Examiner admitted that *Gill* fails to disclose the corresponding implant surfaces and the tool engaging surfaces as being angled. However, the Examiner cited *McGahan* as teaching such a structure in Fig. 15b, which shows a spinal orthopedic set having a spinal implant 10 with angled perimeter surfaces made up of a central flat surface 22 flanked by two flat corner perimeter surfaces 18, 26 that correspond to the angled distal end of the tool having central surface 128 and two flanked flat surfaces 126, 130 to engage the implant. The Examiner opined that it would have been obvious to one of ordinary skill in the art to modify the corresponding surfaces of the baseplates and tool of *Gill* to be angled as taught by *McGahan*, such that the configuration prevents any sliding motion between the baseplate and the tool during insertion. Moreover, the Examiner asserted that *McGahan* shows a wedge-shaped extension projecting from the *distal end* of the manipulation tool.

Independent claim 1 requires a spinal orthopedic device and tool set including an intervertebral spacer device

having first and second baseplates mounted to one another such that the first and second baseplates are articulatable relative to one another, wherein each of the baseplates has an angled perimeter, and a manipulation tool having a correspondingly angled distal end including a wedge-shaped extension projecting therefrom. Therefore, the wedge-shaped extension of the present invention projects from an angled distal end. Independent claim 19 recites that the angled distal end of the manipulation tool includes two sets of angled faces separated by a wedge-shaped extension extending therefrom.

The Examiner is incorrect in asserting that either *Gill* or *McGahan* teaches a "wedge-shaped extension" as disclosed and claimed in independent claims 1 and 19. For instance, the Examiner asserted that *Gill* includes a wedge-shaped extension 84, while in fact, col.7, ll.37-40 of the specification of *Gill* discloses that "each clip 82 is attached to prosthesis engaging portion 76, and **includes two clip fingers 84** each having a thickened portion 86 for insertion into indentations 40 ..." In contrast to the Examiner's assertions, clip fingers 84 in *Gill* instead have a structure similar to the angled distal end of the manipulation tool of the present invention located above and below the wedge-shaped extension protruding therefrom. The wedge-shaped extension of the manipulation tool of the present invention is actually opposite that of the structure of clip fingers 84 in *Gill* wherein a middle portion between the clip fingers is recessed inwardly in contrast to a middle portion of the wedge-shaped extension that protrudes outwardly or projects from the angled distal end of the manipulation tool as recited in independent claims 1 and 19.

Further, the Examiner cannot use *McGahan* to cure the deficiency of "a wedge shaped extension." What the Examiner refers to as a wedge-shaped extension in *McGahan* is similar to

that disclosed in *Gill*. For instance, the Examiner asserts Figs. 10, 13, 20a, 21a, and 26 in *McGahan* teach a wedge-shaped extension. Once again, these structures include a middle portion recessed inwardly between two angled side surfaces. The Examiner cannot provide a teaching in either of the references of a "wedge-shaped extension" projecting from an angled distal end of a manipulation tool. Therefore, the Examiner has not made a *prima facie* case of obviousness as required by M.P.E.P. § 2142.

Further, there is no reason for *McGahan* to include a wedge-shaped extension as recited in independent claims 1 and 19 of the present invention because the implant in *McGahan* is a bone graft that does not include a first portion articulatable with respect to a second portion. Rather, *McGahan* only teaches a solid body implant in connection with the invention disclosed therein. Therefore, while angled flat surfaces of the manipulation tool projecting from a distal end in *McGahan* may be used to prevent rotation of the bone graft during insertion, there would be no reason for the manipulation tool to further include a wedge-shaped extension to further limit the movement of articulating baseplates as recited in independent claims 1 and 19.

For the foregoing reasons, independent claims 1 and 19 are not obvious over *Gill* in view of *McGahan*. Claims 2-18 depending from independent claim 1 are unobvious, *inter alia*, *inter alia*, by virtue of their dependence from claim 1.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at

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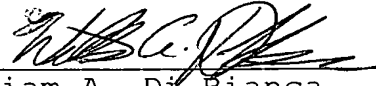
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(908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 18, 2008

Respectfully submitted,

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